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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,269	04/09/2004	Henry Sterchi	723-1502	8633
27562 7590 10/30/2008 NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
OMOTOSHO, EMMANUEL				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
10/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/821,269	<b>Applicant(s)</b> STERCHI ET AL.
<b>Examiner</b> EMMANUEL OMOTOSHO	<b>Art Unit</b> 3714

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 08 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Ronald Laneau/  
Primary Examiner, Art Unit 3714

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues, "Page 2 of the Office Action alleges that elements 128 and 130 of Fig. 4b discloses comparing a timing at which user input is detected to an optimal pitch release timing. Applicant disagrees with this allegation. As described in col. 9 of Lipson, while elements 128 and 130 involve setting a pitch quality as a function of a position of indicator 74 relative to markers 76, 78, and 80 in gauge 66, none of these markers denotes an optimal release timing and gauge 66 is not a release meter". The examiner respectfully disagrees. Elements 128 and 130 of fig 4b specifically states that after a player inputs a command, the system determines the zone in which the indicator is present and then determines indicator position relative to an OPTIMAL zone location. Applicant argues, "Since Lipson fails to teach or suggest comparison to an optimal release timing (claim 1, 9 and 104) or comparison to a target of a release meter (claim 17), Lipson further fails to teach or suggest controlling a break on a baseball pitch based on the comparison." The examiner respectfully disagrees. After the pitch type has been selected by the user, Lipson shows that the system proceeds to a state where the pitch quality is set as a function of the indicator position relative to the optimal zone location designated by markers 76, 78, and 80. Game flow then moves into state 132 where the specific button that was depressed in state 116 is recorded. This determines what style of pitch will be thrown (i.e., curve ball, fastball, special pitch). Hence, after game flow has exited state 132, the player has already greatly affected the upcoming pitch by controlling the pitch type, pitch quality and pitch style. However, at this point the player controls another facet of the pitch, i.e., power as can be seen by reference to FIG. 4c. The system also calculates the sensitivity or the amount of pitch control associated with the pitch. The sensitivity is also calculated as a function of pitch quality and pitch velocity whereby pitch control will be greater for a higher quality pitch and less if the maximum power is applied to a pitch. To determine a path that the pitched ball will take to the plate, flow proceeds to state 162 where the horizontal displacement (maximum curve) and the vertical displacement (maximum break) are determined based on the user selections for pitch style, pitch quality and pitch power. Applicant argues, "Moreover, Lipson actually teaches away from 'hav[ing] these gauges correspond to the wind up session of a pitcher' as alleged by the Office Action. In particular, Lipson explicitly discloses displaying gauges 66 and 82 serially (i.e., displayed one after the other) with a respective indicator 74, 86 that repeatedly resets and rotates until a player presses a button (see, e.g., col. 6, lines 59-65). If the pitcher had already begun the windup before Lipson's gauges 66 and 82 were serially displayed as alleged in the Office Action, either the windup would have to pause or the user would have to depress a controller button too quickly in response to the displayed gauge, thereby defeating the purpose of the repeated reset and rotation of the indicators 74, 86 respectively on the gauges 66, 82 and making it virtually impossible for the player to make selections in all the gauges (and the system to perform the associated processing) during the relatively brief duration of a pitcher's windup" The examiner respectfully disagrees. When a pitcher winds up to deliver a pitch, the pitcher is using some level of power and pitch style. To have the gauges correlate to the wind up session of the pitcher would not teach away from Lipson's BASEBALL SIMULATION system. Applicant should respectfully note that the current invention merely correlates the pitchers windup to the gauges. There is no actual stipulation whatsoever of a physical relation that will require the player to pause or depress a button in order to catch up with the simulation. Applicant argues, "Instead of 'hav[ing] these gauges correspond to the wind up session of a pitcher' as alleged by the Office Action, Lipson explicitly discloses serial display of the gauges 66, 82 receiving all user inputs for the pitch only prior to the pitch. (See, e.g., col. 7, line 68 et seq. stating "A third depress will register the power of the pitch as a function of the indicator 86 position [in the power gauge 82]. After the third time that a button is depressed, the pitch animation sequence begins and the game proceeds," and col. 10, lines 42,43 stating "Once the power of the pitch has been set, a final ore-pitch input is made in state 146 (emphasis added)."). This is actually more of a reason why the obviousness rejection is supported. In a general sense, Lipson's gauges are used to measure the style/characteristics of a pitch and the trajectory the pitch will follow after the ball is released (i.e. the windup characteristics which determines the pitch style, break time and power of the pitch). Applicant argues, "In contrast, Lipson fails to teach or suggest, for example, that a ball is displayed as being released at different points in a pitcher's windup" However, releasing the ball at different points in a pitcher's windup is not claimed nor is it disclosed anywhere in the specification. The examiner is only aware of the current disclosure of releasing the ball once as suppose to releasing the ball multiple times. Applicant argues, "Further, there is no teaching or suggestion in Lipson that a release point corresponds to a detected input, such that the release occurs at a point when the input is detected. As discussed above, all of Lipson's pitching inputs are made before the pitch." Please see par 2-5 of the final office action dated 7/24/08.